

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
AUGUST 28, 2014**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Todd Crowley, Vice Chair; Carol Amick, Clerk; Michelle Puntillo; Kay Hamilton; Arthur Smith; Robert Kalantari

ABSENT: Jeffrey Dearing

Mr. Colasante introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and assistant introduced themselves.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #004-15 – Christina DiCenso, for Cucina D, at 54 Middlesex Turnpike, seeks a Special Permit per Article 39.4 Section 5(C) of the Sign Bylaw to erect awning signs.

Ms. DiCenso introduced herself and her husband, Damian, and explained that they were opening a new restaurant, Cucina D, at 54 Middlesex Turnpike, and they would like to place signs on the awnings. Mr. Colasante stated that it appeared that the awnings already existed. Ms. DiCenso said that was correct; she planned to put wording on awnings that were already there.

There was discussion about the dimensions and aesthetics of the awnings.

Mr. Colasante asked whether the awning signs would be illuminated. Ms. DiCenso replied that they would not.

Mr. Colasante opened the hearing to the public. With no comments or questions from those in attendance, Mr. Colasante closed the hearing to the public.

DELIBERATIONS:

Mr. Colasante noted that this was a Special Permit application, and the two requirements of a Special Permit were that the project was in keeping with the intent and purpose of the Sign Bylaw and was not injurious or detrimental to the neighborhood. He stated that this restaurant was located in an Industrial zone and the building was located quite far back from the road, so he understood the importance of sign visibility.

Mr. Colasante said that his only concern about the awnings was that it potentially did not meet one section of Article 39.4 Section 5(C) of the Sign Bylaw, the portion that reads:

“Letters, numbers and/or logos must be paint-on or appliqué and may not be larger than one (1) foot high.” There was extensive discussion about this section and the height of the logo. Mr. Colasante said that, from the drawings provided, he would be willing to believe that the logo itself was about one foot high. Ms. Amick said she was uncomfortable making that determination and was concerned that this sign did not appear to meet that section of the Bylaw.

There was more conversation about the wording of Section 5(C) and whether the Board had the ability to work around it. The general consensus of the Board members was that they were comfortable that the logo was close enough to one foot in height to grant the Special Permit. Ms. Amick reiterated that she was still uncomfortable granting the Special Permit due to this section.

Mr. Colasante called for a motion.

MOTION:

Ms. Amick moved to grant Christina DiCenso, for Cucina D, at 54 Middlesex Turnpike, a Special Permit per Article 39.4 Section 5(C) of the Sign Bylaw to erect awning signs, substantially as shown on Exhibit A, sheets 1 and 2 inclusive (awning sign layouts and awning sign photos, respectively).

Mr. Crowley seconded the motion.

Voting in favor: Colasante, Crowley, Puntillo, and Hamilton

Voting against: Amick

Abstained: None

The motion carried, 4-1-0.

Mr. Colasante explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, barring any appeals, the applicant may apply for a Sign Permit at the Code Enforcement Department.

Mr. Colasante wished the DiCensos luck with the restaurant. They thanked the Board members for their time.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #001-15 – CONTINUATION – Michael Johnson, for 5 Alaska Avenue, seeks to overturn the Building Inspector’s decision that the lot is unbuildable per Table II: Dimensional Regulations of the Zoning Bylaw.

Mr. Colasante explained that the applicant had chosen to withdraw this current application to overturn the Building Inspector’s decision and had submitted a new

application for a Variance. He asked the applicant to confirm that he still wished to withdraw the current application. Mr. Johnson confirmed that he did.

Mr. Colasante called for a motion to withdraw the application to overturn the Inspector's decision.

MOTION:

Ms. Amick moved to withdraw without prejudice the application of Michael Johnson, for 5 Alaska Avenue, seeking to overturn the Building Inspector's decision that the lot is unbuildable per Table II: Dimensional Regulations of the Zoning Bylaw.

Ms. Puntillo seconded the motion.

Voting in favor: Colasante, Crowley, Amick, Puntillo, and Hamilton

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

PRESENTATION: Ms. Amick read the notice of the hearing.

PETITION #005-15 – Michael Johnson, for 5 Alaska Avenue, seeks a Variance from Table II: Dimensional Regulations to allow dwelling to be constructed on a nonconforming lot.

Mr. Colasante asked Mr. Johnson to go through his request again to refresh the ZBA members and those in attendance of why he was before the Board.

Mr. Johnson said that his father passed away in March and had left the property at 7 Alaska Avenue to him and his brother. He said that his father had always been under the impression that the lot was buildable, and left it to his children with the understanding that they would be able to build on it in the future. He stated that, when he talked to the Code Enforcement Director, he discovered that the lot was, in fact, no longer considered buildable.

Mr. Johnson commented that Mr. Laskey was very helpful in explaining why the lot was not buildable, and the reason stemmed from Section 6 of Chapter 40A of the Massachusetts General Bylaws, which stated that there was a five-year "grace period" from the date of January 1, 1976 to construct a dwelling on the lot under the older provisions provided that, at the time of the lot's creation and recording in 1949, it complied with the previous Zoning requirements – which it did. He said that, after that time, the lot would be required to comply with the newer, more restrictive provisions under the Zoning Bylaw. Mr. Laskey explained to him that, given that 7 Alaska Avenue had already been built upon, case law would suggest that 5 Alaska Avenue was no longer considered buildable and should be combined with 7 Alaska Avenue to create a lot that

conformed to Bedford's current Zoning requirements. Mr. Johnson said that Mr. Laskey also referenced Section 6.4 of the Bedford Zoning Bylaw, which stated, "*No building, structure or part thereof shall be constructed, altered, moved, added to or reconstructed, for use carried on, except in accordance with the requirements of this Zoning Bylaw of the Town of Bedford, or as exempted here from by this Bylaw or the General Laws of Massachusetts.*"

Mr. Johnson noted that his understanding of a Variance was that the applicant must prove a hardship; he said that if this lot were deemed unbuildable, it would be a tremendous financial hardship on himself and his family.

Mr. Colasante opened the hearing to the public.

Mr. Colasante read into the record four letters of support from Harvey Malchow, of 9 Alaska Avenue; Edna Mercurio, of 3 Alaska Avenue; Christine Dudley-Marling, of 3 Oregon Avenue; and Suzanne Stuzynski, 4 Franklin Road.

With no comments or questions from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Colasante explained that a Variance had seven conditions, all of which the Board must find in the affirmative. He said that failure to meet any piece of the "Variance puzzle" meant that the Variance could not be granted.

A particular use must be sought. Mr. Colasante said that was the case here.

The use must be for one not requiring a Special Permit. Mr. Colasante stated that this clearly required a Variance.

Affects a particular parcel or existing building. There was extensive discussion about whether the Variance affected only 5 Alaska Avenue or both 5 and 7 Alaska Avenue. Mr. Crowley stated that he felt the Variance met this condition because 7 Alaska Avenue was already a buildable lot, and the question of whether the lot was buildable fell only to 5 Alaska Avenue.

Conditions affecting this parcel or building but not the whole district. Mr. Colasante said he felt this particular piece of the Variance puzzle was not met in this instance, because the entire neighborhood was made up of similar lots; this neighborhood was subdivided at the same time and all of the parcels were built upon except this one. Ms. Amick agreed, noting that she would have a difficult time finding that the application met this piece.

Substantial hardship, financial or otherwise. Mr. Colasante said that he understood the point about the family being financially affected by selling this lot as buildable as

opposed to unbuildable, but he wasn't sure whether that constituted a hardship. Ms. Amick stated that she did not feel there was a hardship here.

Project is without detriment to the public good. Mr. Colasante said that there would be no change to the aesthetics of the lot or house, so he felt that this requirement was met here.

No derogation from intent and purpose of the Bylaw or ordinance. Mr. Colasante said that this Variance would, in his opinion, be a blatant derogation from the intent and purpose of the Zoning Bylaw.

Mr. Colasante said that this Variance application failed on at least two counts, possibly three. He asked the other members for their opinions.

Mr. Crowley said that this was a very unfortunate situation but he agreed that there seemed to be no legal way to grant this Variance.

Ms. Puntillo said she was greatly concerned about creating a precedent that would bring forth many other residents with similar situations. She said that the purpose of the Zoning Bylaw was to create a certain uniformity among lots and she didn't feel that allowing this Variance was necessarily in keeping with that purpose.

Ms. Hamilton agreed, noting that this application was a struggle for her, because the emotional side of her wanted to grant the Variance but the intellectual side of her that understood the Bylaw told her that granting the Variance was simply impossible.

Mr. Smith said that he too had been struggling with this application, but he believed that fairness dictated that the Board grant the application. He said that all of the other lots in this neighborhood were identical in size and shape and all of them had structures on them. He said it wasn't fair to the applicants or the abutters if this were not granted.

Mr. Colasante said that granting this Variance would most likely open up a floodgate of similar applications. He said that the Variance was a provision in the State law that had very strict requirements, and the Board members could not arbitrarily ignore the law simply because they felt it was unfair.

Mr. Kalantari said that the other members' words mirrored his own thoughts. He said this was an unfortunate situation but it seemed clear that the Board's hands were tied.

Mr. Colasante said that it appeared clear from the discussion that the Board would not be able to grant this Variance. He gave the applicant the option to withdraw the application without prejudice, because a denial meant that he would not be able to return to the Board for two more years, but a withdrawal meant that he could return again. He suggested that the applicant withdraw to keep his options open.

Mr. Johnson talked with the Board members about other options he could explore,

including taking the petition to Land Court. Mr. Colasante apologized that the Board members could not help him with this application; they all understood his predicament and were sympathetic to it, but there was simply no way to grant it under the Zoning Bylaw. Mr. Johnson agreed to withdraw the application, and Mr. Colasante called for a motion to grant the withdrawal.

MOTION:

Ms. Amick moved to withdraw without prejudice the application for Michael Johnson, for 5 Alaska Avenue, seeking a Variance from Table II: Dimensional Regulations to allow dwelling to be constructed on a nonconforming lot.

Mr. Crowley seconded the motion.

Voting in favor: Colasante, Crowley, Amick, Puntillo, and Hamilton

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. He apologized again that the Board could not grant the Variance. Mr. Johnson thanked the members for their time.

Adjournment

MOTION:

Ms. Amick moved to adjourn the meeting.

Ms. Puntillo seconded the motion.

Voting in favor: Colasante, Crowley, Amick, Puntillo, Hamilton, Smith, and Kalantari

Voting against: None

Abstained: None

The meeting adjourned at 9:10.


Angelo Colasante, Chair

10-2-14
Date

Respectfully Submitted,

Scott Gould
ZBA Assistant